

July 9, 2003

**VIA FIRST CLASS MAIL &
ELECTRONIC FILING**

Department of Telecommunications and Energy
One South Station
2nd Floor
Boston, MA 02210
Attn: Mary L. Cottrell, Secretary
Dte.efiling@state.ma.us

**Re: DTE03-62, Included by the Department of Telecommunications and
Energy to Investigate the use of the New England Generation
Information System.**

Dear Madam Secretary:

Cape Wind Associates hereby files its written comments with respect to the Department's proposal to utilize the New England Generation Information System ("GIS") as the sole basis for the fuel source, emission, and labor information included on customer disclosure labels pursuant to the regulations of the Department at 220CMR § 11.06(1). Cape Wind is engaged in the developed in the Nation's first offshore wind farm, which would be capable of generating up to 420 MW of clean and renewable energy. Cape Wind has also been actively engaged in the rule making proceedings of the Massachusetts Department of Energy Resources ("DOER") respecting the requirements of the Massachusetts Renewable Portfolio Standard ("RPS"), CMR14.00, *et seq.*, as well as the NEPOOL Committee proceedings establishing the GIS Operating Rules ("GIS Rules").

In their present state, the relevant provisions of the GIS Rules closely track the regulatory requirements of the RPS Regulations with respect to the allocation of unit-specific attributes to electricity that is generated outside of, but delivered into, the NEPOOL system. Cape Wind's primary concern is that there is no assurance that the GIS Rules will remain in their current form, or a form consistent with the regulatory policies of the Commonwealth of Massachusetts.

Cape Wind's concerns relate to the disclosure treatment applicable to electricity imported into NEPOOL. The GIS Rules currently provide at Rule 2.7(c) that GIS Certificates shall reflect the unit-specific attributes of the generating unit producing such energy only if the energy is actually delivered into the NEPOOL system. More specifically, such GIS Rule requires that the energy be "imported from such generating unit in the adjacent control area into [NEPOOL] with transmission rights over the ties to the Control Area," and that the energy is actually settled in the Multi Settlement System of NEPOOL, as confirmed by "a NERC tag for such Energy meeting the requirements of the System Rules for External transactions for energy." Notably, this unit-specific attribute treatment is available only for "renewable" energy qualified under one of the RPS plans of the New England states.

The foregoing conditions upon the allowance of unit-specific attributes for imported energy, in their current form, are entirely consistent with Massachusetts regulatory policy. Indeed, the recent proceeding of the DOER produced substantially identical conditions in the RPS Regulations limiting the recognition of unit-specific attributes to imports of renewable energy under substantially identical conditions. See, RPS Regulations at 225 CMR 14.0.06(5) ("Special Provisions for a Generation Unit Located Outside the ISO-NE Control Area.") Notably, the DOER Order of February 6, 2002, in such rulemaking made the following rationale for such conditions on allowing unit attributes for imported energy:

The Division believes that physical delivery of electricity to the New England control area is consistent with the statutory requirements that renewable energy be delivered to Massachusetts End-Use Customers. Physical delivery of electricity to the New England Control Area in conjunction with the NE-GIS, will assure market participants with fully and accurately qualify for eligibility under RPS. Units located outside of New England will incur the costs to deliver New and Renewable Generation Attributes to this region. The cost of transmitting electricity from a distant location is an inherent cost of doing business and not a barer to entry. Id. at 10.

The DOER Order further provided that "The Division does not believe that it is sufficient or consistent with the Act to buy attributes from another region without demonstrating delivery of power from a qualifying New Renewable Generation Unit to the NEPOOL region." Id. at 10. Thus, the current provisions of the GIS allowing unit-specific attributes to be recognized for imported energy is expressly limited in a manner that is consistent with Massachusetts policy, as reflected in the RPS Regulations.

The problem which now presents itself is that the GIS Rules are not subject to any sort of oversight or control by the regulatory agencies of Massachusetts, other states, or the Federal Government, and may be revised, amended or revoked at the sole discretion of the member of NEPOOL. Indeed, the Participants Committee of NEPOOL has delegated to the NEPOOL Markets Committee the sole authority to revise the GIS Rules in such manner as its members from time to time deem appropriate. Thus, neither the DTE or the DOER can take any comfort that the GIS Rules will future be consistent with the regulatory objectives of the Commonwealth. Indeed, in the past, certain members of the Markets Committee have shown little regard for the GIS concerns of regulatory agencies. As a general matter, the members of the Markets Committee often vote in a manner that furthers their commercial interest, and there is thus no basis to presume that the GIS Rules will not be altered in a manner that makes them inconsistent with the interest of the Commonwealth.

Accordingly, Cape Wind strongly recommends that the DTE not provide, on an unqualified basis, that the GIS be the sole basis for customer reporting information. To do so would effectively turn over to regulated parties (i.e., the Member of the Markets Committee) discretion over the practical effect of the Department's disclosure regulations. We would recommend that any new rule of the Department clearly articulate the conditions under which unit-specific attributes would be recognized for imported energy (presumably by a regulation stating conditions substantially identical to those of the RPS Regulations and the current form of the GIS Rules.) In such case, the Markets Committee would not be free to effectively alter the Commonwealth's informational disclosure policies without a corresponding change in the Department's regulations. We would also propose that imports that do not need the Department's statement of conditions for unit-specific attributes would continue to be treated as "system power." The Department would thereby effectively maintain effective control over its informational program, as is consistent with public interest.

Sincerely,

Dennis J. Duffy
VP-Regulatory Affairs

cc: Hearing Officer Michael Killion
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